

# **SCHEDULE 4**

**Schedule 4**

**DYSON'S COUNTERSTATEMENT OF CONTESTED  
ISSUES OF FACT AND LAW RELATING TO MAYTAG'S COUNTERCLAIMS<sup>1</sup>**

**Contested Issues of Fact**

**I. THE PARTIES**

**A. MAYTAG LACKS STANDING AND SUBJECT MATTER  
JURISDICTION TO ASSERT ITS COUNTERCLAIMS OR RECOVER  
DAMAGES.**

1. Maytag Corporation ("Maytag") is a corporation organized and existing under the laws of the State of Delaware. Maytag's principal place of business is Newton, Iowa.

2. Maytag's state law claims are subject to Delaware choice of law principles. Under those principles, Maytag's state law claims should have been brought under Iowa law. Maytag's claims under the Delaware Deceptive Trade Practices Act and Delaware common law of unfair competition are improper.

3. The Hoover Company is a corporation organized and existing under the laws of the State of Delaware, and is not a party to this action.

4. The affiliates of Maytag that owned and operated the Hoover floorcare business ("Hoover") are not parties to this action.<sup>2</sup>

5. At all relevant times, the injuries complained of by Maytag were allegedly suffered by Hoover, not Maytag.

6. Through the counterclaims, Maytag seeks to assert the rights of third party Hoover and not its own legal rights.

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<sup>1</sup> Dyson incorporates by reference the Contested Issues of Law and Fact on issues for which Dyson has the burden of proof and which were served on March 5, 2007.

<sup>2</sup> Fact discovery regarding the corporate structure of Maytag and its affiliates has not been completed. Dyson reserves the right to amend, revise, and/or supplement this statement based on facts learned in discovery.

7. At all relevant times, Maytag had no standing to assert claims for damages allegedly suffered by Hoover and the Court lacks subject matter jurisdiction over Maytag's counterclaims.

9. If Maytag had standing when it filed the counterclaims – and it did not – Maytag no longer has no standing to pursue the counterclaims or recover damages on the counterclaims as the result

**B. The Plaintiffs and Other Dyson Entities.**

12. The Dyson group of entities consists of twenty-eight distinct entities in eighteen countries. The group structure is similar to that of many other multinational corporations, in that specific activities are allocated to discrete corporate entities for purposes of fiscal clarity, governance, and management.

13. Plaintiff and Counterclaim Defendant Dyson Technology Limited holds the patent and design rights for the group.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. Plaintiff and Counterclaim Defendant Dyson Inc. is a distributor of Dyson products in the United States.

16. Dyson Inc. purchases Dyson vacuum cleaners for sale in the United States from Dyson Exchange Limited under the terms of a transfer pricing agreement.

17. Transfer pricing refers to the pricing of goods for sale between related companies that are part of large multi-national regimes.

18. Transfer pricing arrangements make up for the fact that related parties cannot negotiate at arm's length by setting a "transfer price" that is the best estimate of what an arm's length price would be based upon an examination of the contributions of the related parties involved in the transaction at issue.

19. Transfer pricing arrangements are legal and commonplace. The principle has been adopted in the IRS Code, 26 USC § 482, and in Article 9 of the Organization for Economic Co-operation Model Tax Convention.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Maytag's parent corporation, Whirlpool Corporation, regularly uses transfer pricing agreements in the ordinary course of its business, and specifically employs individuals for the purpose of analyzing and implementing its transfer pricing policy.

23. Techtronic Industries, Co. Ltd. Inc. also appears to regularly uses transfer pricing agreements in the ordinary course of its business, and specifically employs individuals for the purpose of analyzing and implementing its transfer pricing policy. One of its subsidiaries recently posted a job announcement for a Director of Taxes at its Anderson, South Carolina facility. The job description indicated that the successful applicant would "[e]stablish transfer pricing methodologies and protocols for all US subsidiaries."

## **II. THE DEVELOPMENT AND LAUNCH OF DYSON VACUUM CLEANERS.**

### **A. Dyson Invented and Brought to Market the First Successful Vacuum Cleaner Based on Cyclonic Technology.**

24. The Dyson success story has been widely covered in the press and elsewhere.

25. James Dyson is a renowned inventor and designer. In addition to his revolutionary vacuum cleaners, Mr. Dyson has also designed the Sea Truck (a unique marine vessel with military and commercial applications) and the Ballbarrow (an innovative and much improved wheelbarrow). Since founding the Dyson family of companies, he has also designed washing machines and hand dryers that are being marketed by Dyson.

26. In 1978, while vacuuming his home, Mr. Dyson, became frustrated by the poor performance of his traditional bag-and-filter vacuum cleaner.

27. Mr. Dyson concluded that vacuum cleaners that rely upon bags and filters for the primary separation of dirt from air are inherently flawed because the bags and filters clog with

dirt as the vacuum cleaner is used, thereby restricting the airflow through the vacuum and causing it to lose suction upon use.

28. Mr. Dyson had previously designed and built a large cyclonic dust collector at his Ballbarrow factory. Thinking that the same principle could apply to vacuum cleaners, Mr. Dyson developed his first prototype of the cyclonic technology for use in vacuum cleaners.

29. Over the next several years, Mr. Dyson developed over five thousand prototypes of cyclonic vacuum cleaners, using a painstaking empirical method in order to determine the best possible design. By 1984, he was satisfied enough with the design that he was prepared to market the first vacuum cleaner based on cyclonic technology. Mr. Dyson negotiated licenses for this early technology, based on a Dual Cyclone, with several companies around the world, including in the UK, the US and Japan.

30. Mr. Dyson continued to refine his cyclonic technology during this time and eventually decided to form his own company and sell cyclonic vacuum cleaners under his own name.

31. The first Dyson cyclonic vacuum cleaner, the DC01, was sold in the UK beginning in 1993, and after a few years became the leading seller by both units and sales. Dyson Inc., the US entity, began advertising and selling vacuums in the United States in Fall 2002, starting with the DC07. Unlike his early Dual Cyclone technology, the DC07 and subsequent models marketed in the U.S. consisted of an outer cyclone and seven inner cyclones to more efficiently separate dirt and dust from the air.

III. DYSON'S ENTRY INTO THE U.S. MARKET CAPTIVATES CONSUMERS, AND CATCHES MAYTAG FLAT-FOOTED AND UNPREPARED FOR COMPETITION.

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B. Dyson's Innovative Technology and Unique Design Captivated Consumers and Grew the High End Upright Vacuum Cleaner Segment

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[illegible]

IV. **DYSON'S ADVERTISING CLAIMS ARE NOT FALSE OR MISLEADING.**

54. Maytag's counterclaims challenged thirty-three (33) advertising claims made with respect to the Dyson DC07, DC14, and/or DC15 in this action:

- (a) The most powerful upright.
- (b) The most powerful upright vacuum cleaner available.
- (c) The most powerful upright for pet hair.
- (d) The Root8 Cyclone has the highest suction power and picks up more dirt form your home.
- (e) Dyson scientists developed the Root8 Cyclone technology to give higher suction power and pick up more dust.
- (f) More cyclones give higher suction power.
- (g) Double the suction of other vacuums. After 10 oz. of dust.
- (h) When it comes to vacuuming, nothing is more important than suction
- (i) Higher volumes of air are spread simultaneously through many cyclones to give higher constant suction power – which means you pick up even more dust.
- (j) Wide channel picks up large debris that others can leave behind.
- (k) The Dyson cyclones create 100,000 times the force of gravity to spin dirt out of the air, so nothing gets clogged, ever.

(l) Bags, filters, they all clog with dust and lose suction. But a Dyson works differently. It creates a 100,000 times the force of gravity to spin dirt out of the air, so nothing gets clogged, ever.

(m) [A Dyson] doesn't lose suction.

(n) The first vacuum cleaner that doesn't lose suction.

(o) Only a Dyson is designed not to lose suction.

(p) Unlike other vacuums, Dyson doesn't lose suction.

(q) Because a Dyson doesn't clog like other vacuums, its suction power remains constant, room after room, after room.

(r) Other vacuums can lose up to half their suction power after a small amount of dust. Dyson doesn't – it keeps suction power room after room.

(s) Dirt and dust are thrown out of the airflow and collected in the bin, not on filters or in bags.

(t) Fact: Vacuums don't always work effectively. Dyson does.

(u) Ever since the vacuum cleaner was invented it's had a basic design flaw ... bags, filters they all clog with dust and lose suction. The technology simply doesn't work.

(v) When vacuum cleaners lose suction, your first instinct is to shake or hit it to unblock the clog. The problem, however, is more serious. Bags, filters, they all clog with dust and lose suction. I just think things should work properly.

(w) Other vacuums, the more you use them, the less they work.

(x) Only a Dyson is designed to not lose suction. Which makes you wonder, what are the others designed to do?

(y) Approved for allergy sufferers

(z) ... creates 100,000 times the force of gravity to spin the dirt out of the air

(aa) uses 100,000 G of centrifugal force in the cyclones to filter dust from the airflow efficiently

(bb) Hygienic and quick to empty

(cc) Liquid Steel

(dd) Even the integral hose, seen on most upright vacuum cleaners, is a Dyson invention.

(ee) Dyson ... invented cyclone technology.

(ff) One of the largest UK vacuum manufacturers tried to imitate a Dyson, and James Dyson was forced back into court to protect his invention again.

(gg) The High Court last week agreed with James Dyson that Hoover had stolen the secrets of his dual-cyclone vacuum cleaner.

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A. Dyson's Advertising Claims are Not Literally False.

1. Dyson, Like Hoover, Tests Its Vacuum Cleaners According to Accepted Industry Standards.

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2. Dyson's No Loss of Suction Claims.

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